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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMISI JERMAINE CALLOWAY,

CASE NO. 1:05-cv-01284-LJO-SKO PC

Plaintiff,

ORDER TO SHOW CAUSE WHY
DEFENDANTS SHOULD NOT BE DISMISSED
FROM THIS ACTION

v.

MONTGOMERY, et al.,

RESPONSE DUE WITHIN 30 DAYS

Defendants.

Plaintiff Jamisi Jermaine Calloway (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983.

This action is proceeding on the amended complaint filed on December 13, 2007. (Doc. #28.) On January 27, 2010, the Court screened Plaintiff’s amended complaint and found that it stated cognizable claims against Defendants Montgomery, Babb, Spears, Bhatt, Kappa, and Jane Doe for the violation of Plaintiff’s Eighth Amendment rights. (Doc. #34.) Plaintiff’s remaining claims were dismissed. On March 29, 2010, the Court ordered the U.S. Marshal to serve Defendants Montgomery, Babb, Spears, Bhatt, Kappa, and Jane Doe pursuant to Federal Rule of Civil Procedure 4(c) using contact information provided by Plaintiff.

On August 20, 2010, three summonses were returned unexecuted indicating that Defendants Bhatt, Kappa, and Montgomery could not be served because the U.S. Marshal could not locate them using the contact information provided by Plaintiff. The Court has not received any indication that Defendants Babb, Spears, or Jane Doe have been located and served.

1 Pursuant to Federal Rule of Civil Procedure 4(m), the Court must dismiss Plaintiff's claims
2 against Defendants without prejudice if service is not effected within a specified time. "[A]n
3 incarcerated pro se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for
4 service of the summons and complaint and . . . should not be penalized by having his action
5 dismissed for failure to effect service where the U.S. Marshal or the court clerk has failed to perform
6 his duties." Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994) (quoting Puett v. Blandford, 912
7 F.2d 270, 275 (9th Cir. 1990)), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472
8 (1995). Although Plaintiff is not proceeding in forma pauperis, the Court directed the U.S. Marshal
9 effect service of process under Federal Rule of Civil Procedure 4(c)(3).

10 Where a pro se plaintiff fails to provide the Marshal with accurate and sufficient information
11 to effect service of the summons and complaint, the court's sua sponte dismissal of the unserved
12 defendants is appropriate. Id. at 1421-22. The information provided by Plaintiff was insufficient
13 to allow the U.S. Marshal to locate and serve Defendants Montgomery, Babb, Spears, Bhatt, Kappa,
14 and Jane Doe. There is no indication that the failure to effect service was due to the U.S. Marshal's
15 failure to perform his or her duties.

16 Accordingly, Plaintiff is HEREBY ORDERED to SHOW CAUSE within THIRTY (30) days
17 of the date of service of this order why Defendants Montgomery, Babb, Spears, Bhatt, Kappa, and
18 Jane Doe should not be dismissed from this action for lack of service.¹

19 Plaintiff is forewarned that the failure to show cause may result in a recommendation that
20 Defendants Montgomery, Babb, Spears, Bhatt, Kappa, and Jane Doe be dismissed from this action.

21
22 IT IS SO ORDERED.

23 **Dated: September 21, 2010**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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28 ¹Should Plaintiff have updated information on the whereabouts of Defendants Montgomery, Babb, Spears,
Bhatt, Kappa, or Jane Doe, he should provide it to the Court at this time.